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09 MAY -8 PM 3:26

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

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Attorneys for Plaintiff,
GREGORY VARTANIAN

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 GREGORY VARTANIAN,) Case No.: '09 CV 1004 W BLM
10 Plaintiff,)
11 v.) COMPLAINT AND DEMAND FOR
12 PORTFOLIO RECOVERY ASSOCIATES,) JURY TRIAL
13 Defendant.) (Unlawful Debt Collection Practices)

15 **VERIFIED COMPLAINT**

16 GREGORY VARTANIAN (Plaintiff), by his attorneys, KROHN & MOSS, LTD.,
17 alleges the following against PORTFOLIO RECOVERY ASSOCIATES, (Defendant):

18 **INTRODUCTION**

19 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
20 U.S.C. 1692 *et seq.* (FDCPA).
21 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection
22 Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

23 **JURISDICTION AND VENUE**

24 3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such
25 actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy," and 28 U.S.C. 1337 grants this court
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal
jurisdiction is established.
5 5. Venue is proper pursuant to 28 U.S.C. 1331(b)(1).
6 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

7 **PARTIES**

8 7. Plaintiff is a natural person residing in Carlsbad, San Diego County, California.
9 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
11 and *Cal. Civ. Code* § 1788.2(h).
12 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and *Cal. Civ.*
13 *Code* § 1788.2(c), and sought to collect a consumer debt from Plaintiff.
14 10. Defendant is a collection agency located in Norfolk, Virginia.
15 11. Defendant acted through its agents, employees, officers, members, directors, heirs,
16 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
17 insurers.

18 **FACTUAL ALLEGATIONS**

19 12. Defendant constantly and continuously places collection calls to Plaintiff seeking and
20 demanding payment for an alleged debt (see transcribed voicemail messages attached as
21 Exhibit A).
22 13. Defendant left voicemail messages on Plaintiff's answering machine regarding
23 Plaintiff's debt and Plaintiff's son heard the messages.
24 14. Defendant did not send a debt validation letter to Plaintiff.

COUNT I

15. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(b) of the FDCPA by disclosing Plaintiff's alleged debt to a third party.
- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- c. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the debt within 5 days after the initial communication including: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

16. As a direct and proximate result of one or more or all of the statutory violations above Plaintiff has suffered emotional distress (see Exhibit B).

WHEREFORE, Plaintiff, GREGORY VARTANIAN, respectfully requests judgment be entered against Defendant, PORTFOLIO RECOVERY ASSOCIATES, for the following:

17. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,

- 1 18. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
- 2 19. Actual damages,
- 3 20. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
- 4 *15 U.S.C. 1692k*
- 5 21. Any other relief that this Honorable Court deems appropriate.

6 **COUNT II**

7 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT**

- 8 22. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
9 the allegations in Count II of Plaintiff's Complaint.
- 10 23. Defendant violated the RFDCPA based on the following:
 - 11 a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone
12 to ring repeatedly and continuously so as to annoy Plaintiff.
 - 13 b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to
14 Plaintiff with such frequency that was unreasonable and constituted harassment.
 - 15 c. Defendant violated §1788.12(b) of the RFDCPA by communicating information
16 regarding Plaintiff's debt to Plaintiff's son.
 - 17 d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
18 comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*
19 *1692 et seq.*

- 20 24. As a direct and proximate result of one or more or all of the statutory violations above
21 Plaintiff has suffered emotional distress (see Exhibit B).

22 WHEREFORE, Plaintiff, GREGORY VARTANIAN, respectfully requests judgment be
23 entered against Defendant, PORTFOLIO RECOVERY ASSOCIATES, for the following:

- 24 25. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt
25 Collection Practices Act,

1 26. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*
2 *Civ. Code §1788.30(b)*,
3 27. Actual damages,
4 28. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
5 Practices Act, *Cal. Civ Code § 1788.30(c)*, and
6 29. Any other relief that this Honorable Court deems appropriate.

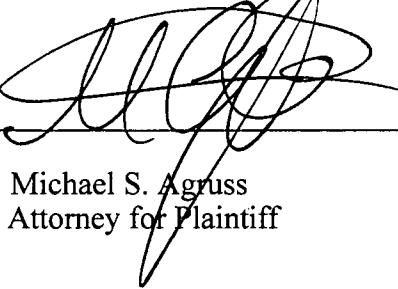
7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, GREGORY VARTANIAN, demands a jury
9 trial in this case.

10
11 RESPECTFULLY SUBMITTED,

12 DATED: May 6, 2009

13 KROHN & MOSS, LTD.

14 By: 

15 Michael S. Agruss
16 Attorney for Plaintiff

1 **VERIFICATION OF COMPLAINT AND CERTIFICATION**

2 STATE OF CALIFORNIA

3 Plaintiff, GREGORY VARTANIAN, states as follows:

4 1. I am the Plaintiff in this civil proceeding.

5 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
6 that all of the facts contained in it are true, to the best of my knowledge, information
7 and belief formed after reasonable inquiry.

8 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
9 law or by a good faith argument for the extension, modification or reversal of existing
10 law.

11 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
12 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
needless increase in the cost of litigation to any Defendant(s), named in the
Complaint.

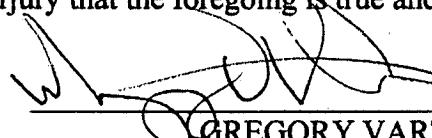
13 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.

14 6. Each and every exhibit I have provided to my attorneys which has been attached to
this Complaint is a true and correct copy of the original.

15 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
have not altered, changed, modified or fabricated these exhibits, except that some of
the attached exhibits may contain some of my own handwritten notations.

16 Pursuant to 28 U.S.C. § 1746(2), I, GREGORY VARTANIAN, hereby declare (or
certify, verify or state) under penalty of perjury that the foregoing is true and correct.

17 DATE: 4/29/2009



18 GREGORY VARTANIAN

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EXHIBIT A

Greg, please contact Kelly ____ner. 18008281110 extension 1372. Thank you.

This call is from Portfolio Recovery Associates. Please return this call at 18778030008 at your earliest convenience. This communication will be with a debt collector, and is an attempt to collect a debt. Any information obtained will be used for that purpose. Our main office is located at 120 Corporate Blvd. ____, Virginia 23502.

Greg, please contact Kelly Wagner. 18008281110, extension 1372.

This call is from Portfolio Recovery Associates. Please return this call at 18778030008 at your earliest convenience. This communication will be with a debt collector, and is an attempt to collect a debt. Any information obtained will be used for that purpose. Our main office is located at 120 Corporate Blvd. ____, Virginia 23502.

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EXHIBIT B

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

1. Sleeplessness	YES <input type="radio"/> NO <input checked="" type="radio"/>
2. Fear of answering the telephone	YES <input type="radio"/> NO <input checked="" type="radio"/>
3. Nervousness	YES <input type="radio"/> NO <input checked="" type="radio"/>
4. Fear of answering the door	YES <input type="radio"/> NO <input checked="" type="radio"/>
5. Embarrassment when speaking with family or friends	YES <input type="radio"/> NO <input checked="" type="radio"/>
6. Depressions (sad, anxious, or "empty" moods)	YES <input type="radio"/> NO <input checked="" type="radio"/>
7. Chest pains	YES <input type="radio"/> NO <input checked="" type="radio"/>
8. Feelings of hopelessness, pessimism	YES <input type="radio"/> NO <input checked="" type="radio"/>
9. Feelings of guilt, worthlessness, helplessness	YES <input type="radio"/> NO <input checked="" type="radio"/>
10. Appetite and/or weight loss or overeating and weight gain	YES <input type="radio"/> NO <input checked="" type="radio"/>
11. Thoughts of death, suicide or suicide attempts	YES <input type="radio"/> NO <input checked="" type="radio"/>
12. Restlessness or irritability	YES <input type="radio"/> NO <input checked="" type="radio"/>
13. Headache, nausea, chronic pain or fatigue	YES <input type="radio"/> NO <input checked="" type="radio"/>
14. Negative impact on my job	YES <input type="radio"/> NO <input checked="" type="radio"/>
15. Negative impact on my relationships	YES <input type="radio"/> NO <input checked="" type="radio"/>

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: I TAKE TRAZODONE TO HELP ME SLEEP, AND I AM NOT WORKING

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 4/29/2009



Signed Name

GREGORY V. VARTANIAN

Printed Name

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
GREGORY VARTANIAN

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Michael S. Agruss (323) 988-2400
10635 Santa Monica Blvd. Suite 170 Los Angeles, CA 90025

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(or Diversity Cases Only) and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	CIVIL RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq.

VI. CAUSE OF ACTION

Brief description of cause:
Unlawful and abusive debt collection practices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE
DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/07/2009

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

350

APPLYING IFFP

JUDGE

MAG. JUDGE

OR

51809

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS000605
Cashier ID: sramirez
Transaction Date: 05/08/2009
Payer Name: KROHN AND MOSS

CIVIL FILING FEE

For: VARTANIAN V. PORTFOLIO RECOVER
Case/Party: D-CAS-3-09-CV-001004-001
Amount: \$350.00

CHECK

Check/Money Order Num: 16257
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.